IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 78 OF 2003

1. Shri Balcrishna Shivram
   Naik Gaonkar, son of
   Shivram Naik Gaonkar,
   and his wife:

2. Smt. Vijayabhai B. Naik Gaonkar,
   Government employee,
   both residents of Chaudi,
   Canacona, presently
   residing at Junta Quarters,
   Margao, Goa.

3. Shri Govind Mahableshwar Sinai
   Nagorsekar, son of
   Mahableshwar Sinai Nagorsekar,
   and his wife:

4. Smt. Suchita Govind Sinai
   Nagorsekar, housewife, both
   residents of Chaudi,
   Canacona, Goa. ... Petitioners.

VERSUS

1. Shri Uday Fati Naik Gaonkar,
   son of late Fati B.Naik
   Gaonkar, resident of
   Delem, Canacona, Goa.

2. Shri Arun Fati Naik Gaonkar,
   son of late Fati Naik Gaonkar,
   and his wife:

3. Smt. Arun Fati Naik Gaonkar,
   housewife, both residents of
   Delem, Canacona, Goa.

4. Comunidade of Nagorcem,
   Palolem, having office at
   Chaudi, Canacona, Goa,
   represented by its attorney,
   Shri Pandurang B.N. Gaonkar,
   resident of House No.252,
   Delem, Canacona, Goa.

5. Mrs. Sitabai Rama N. Dessai,
   widow of Rama Fakir N. Dessai.

6. Shri Pramod Rama N. Dessai,
   son of late Rama F.N. Dessai,
   teacher, widower.

7. Mr. Ashok R.N. Dessai,
son of late Rama F.N. Dessai,
bachelor.

8. Mr. Pradip R.N. Dessai,
son of late Rama F.N. Dessai.

9. Mr. Prashant S.N. Dessai,
son of late Rama Fakir Naik Dessai.

10. Mrs. Kishori C.F. Dessai,
daughter of late Rama R.N.Dessai
housewife, and her husband:

11. Shri Chandrakant V.F. Dessai,
landlord, adult.

12. Smt. Shoba Eknath Prabhu,
daughter of Rama Fakir N. Dessai,
housewife and her husband:

13. Shri Eknath M. Prabhu,
son of M. Prabhu, both
residents of Zoriwaddo,
Usgao, Goa. ... Respondents.

Mr. S.G. Dessai, Senior Advocate with Mr. Shivan Dessai, Advocate for the Petitioners.

Respondents No.1 to 4 served (absent).

Mr. Yogesh Naik, Advocate for the Respondents No. 5 to 13.

CORAM: S.J. VAZIFDAR, J.

DATE: 20TH MARCH, 2003.

ORAL ORDER:

The Writ Petition impugns the judgment of the learned Civil Judge, Junior Division, Canacona, dismissing the petitioners' application for bringing on record additional documents.

2. Normally I might not have interfered with this Order, in view of the fact that it is one passed in the midst of hearing of the suit. However, no useful purpose would be served by merely permitting the petitioners to challenge the impugned Order from the final decree in the facts and circumstances of this case.

3. I had by an Order dated 6th March, 2003, observed that the petition required to be disposed of at the admission stage and directed notices to be issued to the respondents stating that the petition will be finally heard at the admission stage. Notices, it is stated, have been served, but despite the same, the concerned respondents have chosen not to appear.

4. The Suit was filed in 1994 for demolition, mesne profits, injunction and other consequential reliefs. Along with the plaint the plaintiffs filed a list of 55 documents. The Suit was initially filed before the Court of Civil Judge, Senior Division at Margao in 1994. In the year 2000 it was transferred to the Court of the Civil Judge, J.D., Canacona.

5. The Suit was thereafter taken up for

hearing. The examination-in-chief of the plaintiff no.1 was conducted and completed. Just before the cross-examination, the petitioners filed the application for production of additional documents on 31st October, 2002. The documents are all public documents, being a certified copy of the Sale Deed dated 27th September, 1888, Form I and XIV and Form III. In addition thereto the plaintiff also sought to produce an Index of Land record.

6. The plaintiff candidly disclosed the fact that some of these documents they failed to produce when the plaint was filed through inadvertence. The difficulty in obtaining the lease deed and the translation thereof is understandable. It is over 100 years old. No prejudice in any event would be caused to the defendants if the plaintiff is allowed to produce these documents. The relevance, admissibility and the evidentiary value thereof are different matters which would be decided at the trial. At this stage, the plaintiff merely seeks to produce them and nothing more.

7. It is a little difficult to understand the reasoning and the construction which the learned Judge has placed upon Order 7, Rule 14(3) of C.P.C., on the basis of which the learned Judge has held

that the plaintiffs' application is not based on any provision of law. Order 7, Rule 14(3) reads as under :-

> " A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. "

8. The only question was whether the Court ought to have exercised its jurisdiction and granted leave to the plaintiffs to produce the said documents. The provision clearly applies to the petitioners' application. In view of the fact that the documents now sought to be produced were not included in the list as per the provisions of Order 7, Rule 14, the question of the provisions of Order 13, Rule 1 being applicable, does not arise.

9. In the circumstances, the impugned order is set aside and the petitioners shall be entitled to produce the aforesaid documents including the Index of Land record. It is clarified that this Order shall not be construed as having adjudicated in any manner upon the admissibility or relevance of

the said documents.

10. The Writ Petition is accordingly disposed of with no order as to costs.

S.J. VAZIFDAR, J.

sl.